

**Nicole M. McLaughlin**  
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March 2, 2018

**VIA**  
**[HTTPS://FOIAONLINE.REGULATIONS.GOV](https://foiaonline.regulations.gov)**

National Freedom of Information Officer  
United States Environmental Protection Agency  
Office of Environmental Information  
Records, FOIA, and Privacy Branch  
1200 Pennsylvania Avenue NW (2822T)  
Washington, D.C. 20460

Regional Freedom of Information Officer  
U.S. Environmental Protection Agency  
Region 10  
Office of Ecosystems, Tribal and Public Affairs  
1200 6th Avenue ETPA-124  
Seattle, WA 98101

Re: Freedom of Information Act Request  
Portland Harbor Superfund Site

To Whom It May Concern:

Please allow this letter to serve as a formal request pursuant to the Freedom of Information Act (“**FOIA**”), 5 U.S.C. § 552. Specifically, this request concerns United States Environmental Protection Agency (“**EPA**”) records related to the Portland Harbor Superfund Site (“**Site**”) in Oregon.

Throughout this request, the terms “Agency Records” and “Records” are used interchangeably, and they are intended to have the broadest and most inclusive meaning possible under the FOIA. As such, the term “**Agency Records**” includes, but is not limited to, all documents, agreements, contracts, reports, analyses, memoranda, emails, including email on personal accounts, transcripts, minutes, notes, bulletins, worksheets, schedules, calendars, drawings, photographs, renderings, figures, diaries, workpapers,

presentations, data compilations, spreadsheets, databases, and communications created or obtained by EPA and under EPA's control at the time of this request. *See U.S. Dep't of Justice v. Tax Analysts*, 492 U.S. 136, 144-46 (1989).

Specifically, the terms "**Agency Records**" and "**Records**" include, but are not limited to, all Agency Records in electronic, hard copy, or any other tangible or graphic format, however produced or reproduced, including audio or video recordings. "Communications" means any and all recorded communications to or from EPA (and from EPA's consultants and contractors working on the Site), including letters, electronic forms and submissions, emails, and text messages, including any attachment or enclosure included with the communication. "Communications" includes those communications generated by or contained on both government-issued and personal email accounts, computers, tablets, phones, and other electronic communication devices, whether or not sent or received under pseudonym or alias. This request is for Agency Records of EPA as a whole, and it is therefore not limited to Agency Records of EPA Region 10.

We request copies of the following Agency Records:

1. All Agency Records, including Communications, related to NW Natural's Pre-Remedial Basis of Design Technical Evaluations Work Plan (Work Plan) dated July 13, 2017 which was prepared by Anchor QEA, LLC on behalf of NW Natural pursuant to the 2009 Administrative Settlement Order on Consent for Removal Action (CERCLA Docket No. 10-2009-0255), hereinafter referred to as the "AOC".
2. All Agency Records, including Communications, related to EPA's comments on the Work Plan provided by EPA on October 18, 2017.
3. All Agency Records, including Communications, related to EPA's meeting with NW Natural on October 31, 2017.
4. All Agency Records, including Communications, related to EPA's decision to retract "three comments requested by NW Natural; specifically, general comment 2 and specific comment 34 which deal with the Final Project area definition and those portions of specific comment 36 that deal with Oregon state hot spots of contamination," hereinafter referred to as the "EPA November 1 Retraction", as described in EPA's November 1, 2017 letter attached as **Attachment A**. This

request includes all Agency Records containing the facts, considerations, reasons, reasoning, and conclusions that were considered and / or that support the EPA November 1 Retraction, as well as Records that refer to or relate in any way to the EPA November 1 Retraction, and Records that refer to or relate to EPA's consideration of alternatives to the EPA November 1 Retraction.

5. All Communications between EPA and any other person or entity related to the EPA November 1 Retraction. This request includes all Communications containing the facts, considerations, reasons, reasoning, and conclusions that were considered and / or that support the EPA November 1 Retraction, as well as Communications that refer to or relate in any way to the EPA November 1 Retraction, and Communications that refer to or relate to EPA's consideration of alternatives to the EPA November 1 Retraction.
6. All Agency Records, including Communications, related to the definition or delineation of the sediment management area (SMA) located on the west side of the Willamette River as shown on the Portland Harbor Superfund Site Record of Decision (ROD) Figures 31b. and 31c. extending from river mile (RM) 5 to the Railroad Bridge located at approximately RM 6.9 (as described in retracted general comment 2).
7. All Agency Records, including Communications, related to how the Pre-RD sampling results may affect, or be considered by the Agency with respect to, the response action investigation and design activities for the in-water and upland investigation areas of the NW Natural Site located at 7900 NW St. Helens Road and 7540 N.W. St. Helens Road, Portland, Oregon (the "NW Natural Site").
8. All Agency Records, including Communications, related to any and all meetings between EPA and NW Natural scheduled to take place in 2018 related to the performance of response action investigation and design activities in connection with the AOC.
9. All Agency Records related to any party invoking or threatening to invoke the dispute resolution process articulated in Section XVI of the AOC.
10. All Agency Records, including Communications, related to any coordination or communications between EPA and the Oregon Department of Environmental Quality regarding the NW Natural Site, NW Natural, or Gasco from January 1,

2011 to the present, including, but not limited to, communication regarding an upland remedy at the NW Natural Site.

If a given agency record is responsive to more than one individual request or is found in more than one location, EPA need not provide multiple copies or duplicates of the same record.

We will accept responsibility for the reasonable and necessary costs associated with EPA's response to this request, including reasonable standard charges for document searching and duplication, up to a maximum amount of \$1,000.00. *See* 5 U.S.C. § 552(a)(4)(A)(ii)(III); 40 C.F.R. § 2.102(d). If EPA determines that the reasonable and necessary costs of responding to this request will exceed \$1,000.00, please contact us as soon as possible to discuss payment. If for some reason copies of certain Agency Records cannot be made or provided, we request an opportunity to view and inspect those Agency Records.

If it is EPA's position that any of the Agency Records requested in this letter are exempt from disclosure under the FOIA, EPA must nonetheless provide any reasonably segregable portions of those Agency Records after deleting or redacting the purportedly exempt portions. 5 U.S.C. § 552(b); *Pebble Ltd. P'ship v. U.S. Env'tl. Prot. Agency*, No. 3:14-cv-0199-HRH, 2016 WL 128088, at \*3 (D. Alaska Jan. 16, 2016); *see also* Attorney General Eric L. Holder, Memorandum for Heads of Executive Departments and Agencies (Holder Memorandum), 74 Fed. Reg. 49892-01 (Sept. 29, 2009), 74 Fed. Reg. 51878-02 (Oct. 8, 2009) ("Agencies should always be mindful that the FOIA requires them to take reasonable steps to segregate and release nonexempt information.").

If EPA withholds all or any portion of a record requested in this letter, EPA must indicate in the response the amount of information that is withheld, deleted, or redacted, as well as the basis for each withholding, deletion, or redaction. 5 U.S.C. § 552(b); 40 C.F.R. § 2.104(h). Please provide an index or catalogue of responsive Agency Records that EPA intends to withhold in full or in part, as well as an individual explanation for each full or partial withholding, consistent with the holding in *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973).

If EPA chooses to withhold segregable portions of any agency record that is responsive to this request, please use blackout redactions rather than deletions or whiteout redactions. If Agency Records that would otherwise be responsive to this request have been destroyed or are no longer in EPA's control, please identify each record, the date of destruction, and the person(s) who destroyed the record.

The President has observed that “[a] democracy requires accountability, and accountability requires transparency.” Presidential Memorandum for Heads of Executive Departments and Agencies Concerning the Freedom of Information Act (Presidential Memorandum), 74 Fed. Reg. 4683 (Jan. 21, 2009). In light of those principles, the President has instructed all federal agencies, including EPA, to “adopt a presumption in favor of disclosure” when making decisions involving FOIA. *Id.* That instruction is consistent with the underlying legislative purpose of the FOIA, a statute whose basic purpose is to instill “a general policy of full agency disclosure . . . .” *Dep’t of Air Force v. Rose*, 425 U.S. 352, 360 (1976), quoting S. Rep. No. 813, 89<sup>th</sup> Cong., 1<sup>st</sup> Sess., 3 (1965).

The President has further instructed federal agencies to “act promptly and in a spirit of cooperation” when responding to FOIA requests, “recognizing that such agencies are servants of the public.” Presidential Memorandum, 74 Fed. Reg. at 4,683. Similarly, the FOIA guidelines issued by then-Attorney General Eric L. Holder in 2009 “strongly encourage agencies to make discretionary releases of information,” and they explain that “an agency should not withhold information simply because it may do so legally.” Holder Memorandum, 74 Fed. Reg. at 51878-02.

We trust that EPA will take seriously its obligations under the FOIA, the Administrative Procedures Act, and the above-referenced Executive directives for implementing these statutes when responding to this request for Agency Records. We invite you to contact us as soon as possible to arrange for delivery of the Agency Records requested. In the meantime, we appreciate your prompt attention to this request, and look forward to your response.

Sincerely,



Nicole M. McLaughlin

Attachment

# **ATTACHMENT A**



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 10**

1200 Sixth Avenue, Suite 900  
Seattle, WA 98101-3140

OFFICE OF  
ENVIRONMENTAL CLEANUP

November 1, 2017

Mr. Bob Wyatt  
NW Natural  
220 NW 2nd Avenue  
Portland, Oregon 97209

*sent via email only*

Mr. Myron Burr  
Siltronic Corporation  
7200 NW Front Avenue, M/S 20  
Portland, Oregon 97210-3676

Re: EPA comments on Pre-Remedial Basis of Design Technical Evaluations Work Plan, Gasco  
Sediments Cleanup Action

Dear Sirs:

The U.S. Environmental Protection Agency (EPA) and NW Natural met on October 31, 2017 for a preliminary discussion regarding comments on the Pre-Remedial Basis of Design Technical Evaluations Work Plan (Work Plan) provided by EPA on October 18, 2017. The discussion included two comments that NW Natural feels are outside the scope of the current agreement and prevents them from moving forward outside of the dispute resolution process articulated in Section XVI. of the 2009 Administrative Settlement Order on Consent for Removal Action (CERCLA Docket No. 10-2009-0255). A third comment they pointed out was inconsistent with the Record of Decision. Clarification was also provided by EPA on several other comments that will, along with the full comment set, be further discussed soon with a larger audience.

Based on the October 31 discussion, EPA has decided to retract the three comments requested by NW Natural; specifically, general comment 2 and specific comment 34 which deal with Final Project area definition and those portions of specific comment 36 that deal with Oregon state hot spots of contamination. NW Natural's ability to invoke dispute on other Work Plan comments will start after submittal of future EPA comments on the basis of design technical memorandum that a particular Work Plan comment applies to.

Please let me know if you have any questions or concerns at (206) 553-1220 or via email at [sheldrake.sean@epa.gov](mailto:sheldrake.sean@epa.gov).

Sincerely,

A handwritten signature in black ink, appearing to read "SS", is located below the "Sincerely," text.

Sean Sheldrake, RPM

Cc: Dana Bayuk, DEQ  
Lance Peterson, CDM  
TCT

*via email only*